IN THE

Supreme Court

OF THE

UNITED STATES

BOUNDARY COUNTY, IDAHO, a municipal corporation of the State of Idaho, by RAY SIMS, ROBERT H. HARTLING and CHARLES SCHAUER, its County Commissioners,

Petitioners,

v.

MARTIN WOLDSON,

Respondent.

No.------

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

In this case there are three opinions: two conflicting opinions from two Judges of the United States District Court, Northern Division of Idaho, and an opinion from the United States Circuit Court of Appeals for the Ninth Circuit, found: Page 20, appendix this brief; *Boundary County v. Woldson*, 49 Fed. Supp. 600, 144 Fed. (2d) 17, respectively.

STATEMENT OF GROUND ON WHICH JURISDICTION IS INVOKED

The Circuit Court of Appeals for the Ninth Circuit has decided an important question of local law

in conflict with applicable decisions of the State of Idaho. *Kivett v. Owyhee County,* (Ida.), 74 P. (2d) 87.

Jurisdiction is invoked under Section 240(A) of the Judicial Code as amended by the act of February 13, 1925, 43 St. Stat. 938.

STATEMENT OF CASE

Petitioner is a County of the State of Idaho. By reason of delinquent taxes and drainage district assessments it became the owner of the lands involved in this litigation. The lands, in conformity with State statute, were advertised and offered for sale at public auction (R. 13). Woldson, a citizen of Washington, bid $72,143.96 (R. 8-10).

The commissioners of Boundary County, in reliance on Idaho Statute, Sec. 30-708, I.C.A. (appendix), rejected Woldson's bid for the reason that it was insufficient to cover all delinquent taxes and assessments for which the land was being sold (R. 95). Woldson, in the Idaho State Court, sought and received judgment and peremptory writ directing acceptance of his bid upon his paying "cash or its equivalent," provided that State and County taxes were paid in cash (R. 52).

Woldson owned all the bonds and interest coupons of the drainage district covering the lands embraced herein (R. 16). The drainage district made demand on petitioner to, in conformity with Idaho Statute, pay into its various funds its pro rata share of Woldson's

bid (R. 15-17). Petitioner in turn demanded of Woldson payment of the remainder of his bid in cash (R. 17) which demand was by him refused. This action (R. 2-7) was commenced in the State Court and removed to the United States District Court, Northern Division of Idaho, on petition of Woldson. The purpose of the action is to recover the unpaid portion of the bid, or in the alternative, for recovery of title to the lands.

ARGUMENT BRIEFLY SUMMARIZED

Your petitioner, in its capacity as a County of the State of Idaho, became the owner of the lands here in controversy under Idaho statutes, by virtue of delinquent taxes and assessments. It thereafter sought to sell the lands, title to which is here in question, for cash at public auction in compliance with State statutes. Woldson was a bidder at the sale (R. 13).

It is the contention of petitioner that it, under local law, had the right to reject Woldson's bid for the reason that it was, in the judgment of its County Commissioners, insufficient, Sec. 30-708, I.C.A.; that the judgment of the Idaho Court ordering petitioner's commissioners to accept Woldson's bid was *void* for want of jurisdiction; that the judgment of the Idaho State Court ordering the acceptance of Woldson's bid for cash *or its equivalent* was void because made in violation of statute, therefore being in excess of jurisdiction; that sale and transfer of deeds to lands in question was void in any event because of failure of Woldson to comply with terms of bid and sale; that the bonds and interest coupons were not the equivalent of cash and could not be used as cash in the performance of the terms of his bid; and that Woldson has not made good his bid or paid a valid consideration for the lands deeded to him in conformity with his bid.

ARGUMENT

UNDER LOCAL LAW PETITIONER ACQUIRED THE LANDS HERE IN QUESTION FREED OF ALL LIENS AND ENCUMBRANCES, INCLUDING THOSE OF WOLDSON'S BONDS.

Sec. 61-1032, *I. C. A.* (appendix);

Hunt v. City of St. Maries, et al, 260 Pac. 155;

Heffner v. Ketchen, 296 Pac. 768;

Smith v. City of Nampa, 68 P. (2d) 344;

Thompson v. Goble, 71 P. (2d) 100.

LOCAL LAW PRESCRIBED METHOD OF SALE AND PAYMENT TO BE RECEIVED FOR COUNTY PROPERTY.

Sec. 30-708, *I. C. A.* (appendix).

Failure to receive cash in payment of a bid made at public sale advertised to be for cash renders the sale *void. Kivett v. Owyhee County,* (Ida.), 74 P. (2d) 87.

THE COLLECTION AND PAYMENT OF TAXES IS CONTROLLED BY LOCAL LAW.

Richmond v. Bird, 249 U. S. 174, 63 L. Ed. 543;

New Jersey v. Anderson, 203 U. S. 483, 51 L. Ed. 284;

In re Davenport Dry Goods Co., 9 Fed. (2d) 477.

TITLE TO REAL PROPERTY IS GOVERNED BY STATE LAW.

Paepcke v. Kirkman, 55 Fed. (2d) 814;

Brown v. Leo, 12 Fed. (2d) 350;

Fletcher v. Delaware L. & W. R. Co., 79 Fed. (2d) 306.

That portion of the judgment of the State Court directing the acceptance by commissioners of payment of Woldson's bid in something other than cash, in violation of State statute Sec. 30-708, I. C. A. (appendix) was *void. Ex Parte Cox,* (Ida.), 32 Pac. 197; *Glover v. Brown,* (Ida.), 184 Pac. 649.

WAS WOLDSON THE HIGHEST BIDDER FOR CASH?

The term "highest bidder means him who will make the highest bid for all the property." *Fox v. Wright,* 152 Cal. 59, 91 Pac. 1005; *Merchants Trust Co. v. Wright,* 161 Cal. 149, 118 Pac. 517.

"A sale for cash is a sale for the money in hand."

Dazet v. Landry, 21 Nev. 291, 30 Pac. 1064, 1066.

The foregoing citation is cited with approval by the Supreme Court of Arizona in the case of *Ray v. Frye,* 119 P. (2d) 941.

"The sale must be for cash unless credit is expressly authorized. If the credit is part of the agreement of sale, it is absolutely void * * *."

Blackwell on Tax Titles, Sec. 509.

A VOID JUDGMENT IS NO JUDGMENT AT ALL

"A void judgment is, in legal effect, no judgment. By it no rights are divested. From it no rights can be obtained. It neither binds nor bars anyone. All acts performed under it and all claims flowing out of it are void * * *."

Freeman on Judgments, Section 116, page 176; cited with approval in *Glover v. Brown,* (Ida.), supra.

PERSONS DEALING WITH A COUNTY ARE OBLIGATED TO SEE TO IT THAT ITS CONTRACTS ARE LEGAL.

"It is incumbent upon persons or corporations making contracts with a county to see that they are legal contracts."

Jackson Equipment & Service Co., et al v. Dunlop, et al, 172 Miss. 752, 160 So. 734 at 737.

Western Paint & Chemical Co. v. Board of County Com'rs of Kingfisher County, 172 Okl. 599, 46 P. (2d) 543;

Shawnee News Co. v. Board of County Com'rs, 173 Okl. 106, 46 P. (2d) 568;

McDonald v. Scott County, 87 S. W. (2d) 1019;

Leslie County v. Keith, 227 Ky. 663, 13 S. W. (2d) 1012.

COUNTY NOT ESTOPPED TO REPUDIATE CONTRACT MADE BY ITS COMMISSIONERS IN EXCESS OF ITS POWER OR AUTHORITY TO MAKE, IT BEING VOID.

Litchfield v. Ballou, 114 U. S. 190, 29 L. Ed. 132, 5 Sup. Ct. Rep. 820;

Central Transp. Co. v. Pullman's Palace Car Co., 139 U. S. 24, 48, 35 L. Ed. 55, 64, 11 Sup. Ct. Rep. 478, 484;

Daviess County v. Dickinson, 117 U. S. 657, 664, 29 L. Ed. 1026, 1029, 6 Sup. Ct. Rep. 897, 900;

Vial v. Paradis, (Ida.), 255 Pac. 643, 53 A. L. R. 191.

"If the contract was one beyond the power of a county under any circumstances to make, then the keeping and using of the machinery would not constitute an estoppel, and the act of the county under such circumstances could not be ratified. The rule is laid down by *Dillon on Municipal Corporations,* Section 797, as follows: 'A municipal corporation may ratify the unauthorized acts and contracts of its agents or officers which are within the scope of the corporate powers, but not otherwise.' (citing cases)."

Scott v. Advance Romelly Thrasher Co., 288 Fed. 739, 36 A. L. R. 938.

We believe it patent that your petitioner is gravely affected by the decision in this case contrary to the local laws under which it is governed in that the decision affects its fiscal structure and constitutes precedent for the payment of bids made at its tax sales in other than cash in contravention of local law.

We respectfully submit that the petition for writ of certiorari should be granted.

Respectfully submitted,

W. J. NIXON,
Bonners Ferry, Idaho

GEO. W. YOUNG,
Paulsen Bldg.,
Spokane, Washington

CLAUDE D. RANDALL,
Paulsen Bldg.,
Spokane, Washington,
Attorneys for Petitioners.

APPENDIX

Section 61-1009, Idaho Code Annotated:

"Delinquency Tax Entries.—No taxes levied for any year and entered upon the real property assessment roll shall be received by the tax collector on or after the fourth Monday of December and prior to the fourth Monday of January or after the fourth Monday of June, and prior to the fourth Monday of July, in the succeeding year.

The tax collector must, on or before the first Monday of January in said succeeding year, carry over and enter all delinquent taxes and the penalty thereon, in the proper columns provided therefor in the real property assessment roll, which entry of delinquency shall be dated as of the first Monday of January of each year and shall have the force and effect of a sale to the tax collector as grantee in trust for the county, for all property entered upon the real property assessment roll on which one-half of the original amount of such taxes has not been paid.

The tax collector must, on or before the first Monday of July in said succeeding year make delinquency entries as hereinbefore described, to be dated as of the first Monday of January in the year such taxes fall delinquent, for all property entered upon the real property assessment roll on which the remaining one-half of the original amount of such taxes, with the penalty added thereto, has not been paid.

The auditor shall charge the tax collector with the total amount of all delinquency entries and credit him with all payments and redemption thereof."

Section 2. Section 61-1025 Idaho Code Annotated, as amended 1933 Session Laws, Chap. 2, is hereby amended to read as follows:

'61-1025 TAX DEED—ISSUANCE. If the property is not redeemed within three years from the date